

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT**

**NASHVILLE, TENNESSEE**

October 24, 2001

**IN RE:**

**JOINT APPLICATION OF THE MONTANA POWER  
COMPANY AND ITS WHOLLY-OWNED SUBSIDIARY,  
TOUCH AMERICA, INC. FOR AUTHORITY TO  
CONDUCT AN INTERNAL REORGANIZATION OF THE  
COMPANY AND EFFECT A CHANGE OF CONTROL**

**DOCKET NO.  
01-00645**

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**ORDER APPROVING TRANSFER OF AUTHORITY**

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This matter came before the Tennessee Regulatory Authority (the "Authority" or "TRA") at the regularly scheduled Authority Conference held on August 7, 2001 for consideration of the Joint Application (the "Joint Application") of the Montana Power Company ("Montana Power") and Touch America, Inc. ("Touch America") (the "Applicants"), pursuant to the provisions of Tenn. Code Ann. § 65-4-113, for approval of an internal reorganization which will result in a transfer of the authority to provide utility services currently held by Touch America.

**Requirement of and Standards for Authority Approval**

Tenn. Code Ann. § 65-4-113 requires a public utility to obtain Authority approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) provides as follows:

(a) No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) provides the standards by which the Authority shall consider an application for transfer of authority, in pertinent part, as follows:

(b) Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. . . .

### **The Joint Application**

In the Joint Application, which was filed on July 23, 2001, the Applicants request Authority approval of an internal reorganization which will result in a transfer of the authority to provide utility services currently held by Touch America. According to the Joint Application, Montana Power is a natural gas and electric transmission and distribution utility serving the western two thirds of the State of Montana. Touch America is a wholly-owned subsidiary of Montana Power. Touch America is currently certified to provide telecommunications services in forty-four (44) states, including Tennessee.<sup>1</sup>

The Joint Application explains that Touch America was originally incorporated in Montana in 1983 as a wholly-owned subsidiary of Entech, Inc. (“Entech”), which is a wholly-owned subsidiary of Montana Power. In the spring of 2000, Montana Power announced that it would divest itself of all of its energy-related business in order to focus on telecommunications. To that end, Montana Power has completed the sale of its Oil and Gas Division, its Coal Mining subsidiary, and its Independent Power Group. In addition, an agreement has been reached with Northwestern Corporation of Sioux Falls, South Dakota, for the sale of Montana Power’s gas and electric utility.

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<sup>1</sup> Touch America was granted authority by the TRA to provide telecommunications services as an interexchange carrier in Tennessee by Order dated March 22, 2001 in Docket No. 00-00984.

The Joint Application further explains that at the completion of the divestiture process, Montana Power will rename itself Touch America Holdings, Inc., which will be incorporated in the State of Delaware. This company will become the owner of the operating businesses of Touch America, Tetragenics Company, an electric control systems firm, and Entech. As a result of the reorganization, all holders of common stock in Montana Power will become the shareholders of Touch America Holdings, Inc.

According to the Joint Application, Touch America currently has no customers in Tennessee. The Joint Application states that the proposed reorganization will be in the public interest because it will allow Touch America's ultimate parent company, Montana Power, to concentrate its resources on the provision of telecommunications services. The Joint Application further states that the reorganization will have no effect on consumers, as all rates, terms, and conditions for telecommunications products and services as reflected in Touch America's tariffs and price lists will remain unaffected.

### **Findings**

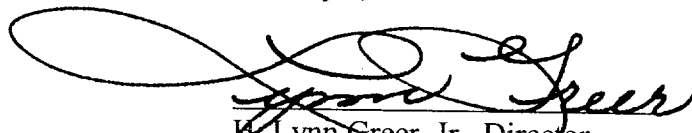
The Directors of the Authority considered this matter at the August 7, 2001 Authority Conference. Based upon careful consideration of the Joint Application, the Exhibits thereto, and of the entire record of this matter, the Authority finds and concludes as follows:

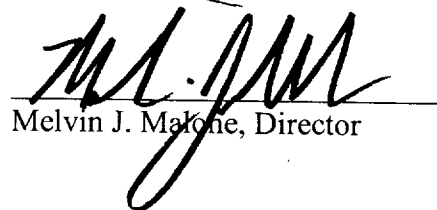
1. The Authority has jurisdiction over the subject matter of this Joint Application pursuant to Tenn. Code Ann. § 65-4-113;
2. Touch America, Inc. has been granted authority to provide telecommunications services in Tennessee;
3. The authority granted to Touch America, Inc. will be transferred to Touch America Holdings, Inc.; and
4. The transfer of authority will benefit the consuming public.

**IT IS THEREFORE ORDERED THAT:**


1. The Joint Application of the Montana Power Company and Touch America, Inc. for approval of the transfer of authority described herein is approved; and
2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from and after the date of this Order.

  
Sara Kyle, Chairman

  
L. Lynn Greer, Jr., Director

  
Melvin J. Malone, Director

ATTEST:

  
K. David Waddell, Executive Secretary